

THE DECALOGUE JOURNAL

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Number 1

Res Ipsa Loquitur

by BENJAMIN WEINTROUB

Chairman, Editorial Committee

With this issue the new Editorial Committee makes its bow to the membership of our Society. Its face lifted and waistline reduced, it bids for the favor of welcome. The Committee proposes no revolutionary departures either as to content or editorial direction. It boasts of no panaceas that would make for a short cut toward a goal that would bestow instant boon and benefits upon our Society.

It proposes, however, as long as it is invested with the power granted it, to report diligently and closely the manifold activities of The Decalogue Society of Lawyers. To give practical expression and to reflect in its pages the aims and the work of many committees which constitute the backbone of the Society's bid for usefulness. The Editorial Committee will deem it obligatory to stress in the columns of this Journal the premise that, an organization of the stature and numerical strength of The Decalogue Society of Lawyers needs lend its influence to ideals and causes which make for the advancement of the ethical precepts and the general interests of the profession. In charting its course toward this end it hopes to enlist the keen interest of the entire membership.

A bar association comprised of lawyers of Jewish faith, The Decalogue Society has demonstrated repeatedly its awareness of Jewish problems. We quote from the inaugural address of our President elsewhere here published in full, that which best epitomizes the convictions of the Committee upon a vital phase of its endeavors.

"... Ours is an organization composed of more than fifteen hundred lawyers and judges of Jewish faith. Our brethren have just gone through an experience the equal of which is unknown in the annals of human history."

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Lawyers Answer Call

by MAYNARD WISHNER

Member Maynard Wishner is Chairman of the Board of the Young Peoples division of the Combined Jewish Appeal 1950, and Director of the Department of Law and Order of the Commission on Human Relations, City of Chicago.

Responding to an urgent plea for funds to meet pressing overseas, national and local community needs, over 900 of Chicago's Lawyers have, thus far, contributed approximately \$350,000.00 to Chicago's Combined Jewish Appeal. Something like half of those who reaffirmed their concern for a healthy Jewish Community, wherever Jews may be, are members of The Decalogue Society of Lawyers.

The Lawyer's Division of CJA headed by Chairmen William J. Friedman and Harold Perlman set about its task early in the campaign with the organization of working committees. Frank D. Mayer and Barnet Hodes assumed the responsibility for directing the efforts of 45 lawyers working on "Special Gifts." The General Assignment Committee headed by Lester Reinwald soon had the 100 man "Building Committee" telling the CJA story to lawyers in 45 loop office buildings. Members of the Bench gave their aid through a special Judges' Advisory Committee with Judge Julius Hoffman as Chairman.

Adding new warmth to this year's Campaign was the request from the "Lady Lawyers" to share actively in community responsibility and the subsequent formation of the Women Lawyers Committee under Mrs. Frances Brown Corwin.

Other 'firsts' for 1950 were a Patent Lawyers Committee headed by Albert Kegan and a Court Reporters group under Joseph Brandes. Decalogue Society Past President Samuel Allen, Associate Chairman of the Lawyers

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The United States Supreme Court and Civil Rights

by HARRY G. FINS

Mr. Fins is the author of *Illinois Motion and Petition Practice*, *Illinois Administrative Procedure*, *Illinois Administrative Review Act Annotated*, *Illinois Civil Practice*, *Appeals and Writs of Error in Illinois*, and *Illinois Procedure*. A member of the Decalogue Society Board of Managers he is a lecturer in the Post Graduate Division of the John Marshall Law School and at Lawyers Post Graduate Clinics.

The petitioner, a negro, was convicted in a Texas State court for murder. He made a motion to quash the indictment on the ground that his rights under the 14th amendment had been violated by the exclusion of negroes from the grand jury. The jury commissioners testified that no negroes were selected for the grand jury because they chose jurors only from people with whom they were personally acquainted and they knew no negroes who were eligible and available for grand jury service. It also appeared that from 1942 until 1947 there had been 21 grand juries on none of which was there more than one negro; that of the 252 members on those juries 17 were negroes and that about fifteen and a half per cent of the population of the county and six and a half per cent of the eligible voters were negroes. The highest state court of Texas affirmed the conviction.

The Supreme Court of the United States reversed it on the ground that the defendant was denied the equal protection of the laws as guaranteed under the 14th amendment to the Constitution of the United States. *Cassel v. Texas*, 339 U. S. 282. (1950)

* * *

The petitioner was denied admission to the state supported University of Texas Law School, solely because he was a negro and the state law forbids the admission of negroes in that law school. He was offered, but refused, enrollment in a separate law school newly established by the state for negroes. The University of Texas Law School has 16 full time and 3 part time professors, 850 students, a library of 65,000 volumes, a law review, moot court facilities, scholarship funds, an order of the Coif affiliation, many distinguished alumni, and a great deal of tradition and prestige. The

separate law school for negroes, however, has 5 full time professors, 23 students, a library of 16,500 volumes, a practice court, a legal aid association and one alumnus admitted to the Texas bar. This law school excludes from the student body members of racial groups which number eighty-five per cent of the population of the state and which includes most of the lawyers, witnesses, jurors, judges, and other officials with whom the petitioner would deal as a member of the Texas bar.

The Supreme Court of the United States held that the legal education offered the petitioner was not substantially equal to that which he would receive if admitted to the University of Texas Law School, and that equal protection clause of the 14th amendment to the Constitution of the United States requires that he be admitted to the University of Texas Law School. *Sweatt vs. Painter*, 339 U. S. 629. (1950)

* * *

Appellant, a negro citizen of Oklahoma, possessing a Master's degree, was admitted to the Graduate School of the state supported University of Oklahoma as a candidate for a doctorate in Education and was permitted along with white students to use the same classroom, library and cafeteria. However, pursuant to a requirement of the state law that the instruction of negroes in an institution of higher education is to be conducted "upon a segregated basis" the appellant was assigned to a seat in the class room in a row reserved for negro students only, and otherwise assigned to a segregated space.

The Supreme Court of the United States held that the conditions under which the appellant was required to receive his education deprived him of his personal and present rights to the equal protection of the laws as guaranteed to him by the Constitution of the United States and that the 14th Amendment precludes such differences in treatment by a state for racial reasons. *McLaurin, Oklahoma State Regents for Higher Education*, 339 U. S. 637 (1950)

President Carl B. Sussman's Inaugural Address

Delivered June 23, 1950, at the Covenant Club of Illinois

Mr. Chairman, Distinguished Guests, Members of The Decalogue Society of Lawyers, Ladies and Gentlemen:

I wish to assure you of my deep appreciation of the honor which The Decalogue Society of Lawyers has conferred upon me by gracing me with the Presidency of our Society for the year ahead. Your presence here and your good wishes will be a source of needed strength throughout the coming year.

As a Vice-President of this Society during the past two years, my responsibilities were limited to but a part of the work of this civic organization, the third largest Bar Association in Illinois and the fourteenth in the nation. I have learned that the Presidency is a serious responsibility and requires much courage, energy, sound judgment, and above all the cooperation of our members.

For the past several weeks in anticipation of this great event I tried to take inventory of my shortcomings not the least of which is my relative youthfulness. I am not anticipating the giving to our Society all the answers to the pressing problems facing us as lawyers and as citizens, but I do have the will to do a good job. I shall have the assistance of fine officers, a hard working Board of Managers, and the good will of a group of outstanding lawyers with superb capacity to serve on our many committees, and I am confident we will give a good account of ourselves, during the months ahead.

In reviewing the roster of our membership and in appreciation of the stature of the men who have preceded me in office, I am made to realize the high standards set for me. Many of these men are my dearest and closest friends—and cherishing their friendship I shall again look to them for counsel and guidance.

And now what are some of the problems ahead of us? As I see it, our Credo taken from our Society's Constitution charts our goal and objectives. We, in our Society and in the American Bar have accepted the challenge to develop the American potential for greatness if we adhere to the fundamental principles of

the American Constitution and the teachings of the Biblical Decalogue. This challenge will be met if we use our democratic processes for the enactment of legislation—and the enforcement thereof—in order that we may practice the concept of equality of opportunity we are prone to proclaim to others.

The lawyer through his Bar Association can become a more effective pleader for greater progress if he is intensely conscious of the opportunities for public service which his calling affords him. If, for instance, we are to exert our influence and strive for Constitutional revision for Illinois, then we as citizen lawyers and leaders of our community must first acquaint ourselves with the many problems before us. We must become intimately familiar with the legal complexities involved. To be responsible to our profession we must not just criticize. We must participate dynamically in that which makes for a better community. It is our government and we must work at it as we do our other tasks.

We lawyers must implement the resolution adopted in 1946 by the American Bar Association—"that it is a fundamental duty of the Bar to see to it that all persons requiring legal advice be able to obtain it irrespective of their economic status."

We must see that academic freedom is maintained at the university level. We must be ever mindful that the solution to this problem is not found in restrictive legislation, for in doing so we may very well restrict the liberties which we aim to safeguard.

We must aim to protect all individuals (particularly in this present period of hysteria) from being tried in the press without first having their day in court. The arm of government must protect and guard against the accusation of innocent persons on evidence received from anonymous informants.

Ours is an organization composed of more than fifteen hundred lawyers and judges of Jewish faith. Our brethren have just gone through an experience the equal of which is unknown in the annals of human history. The

Nuremberg trials, the report of Robert H. Jackson, Associate Justice of the Supreme Court of the United States—the findings of world tribunals—are but a few of the everlasting testimonials—that more than six million men, women and children were deliberately and scientifically destroyed in furtherance of monstrous aims of evil people. The courage of the survivors to rehabilitate themselves has thrilled the imagination of the world. So does the miracle achieved by the people of the democracy of Israel now and at this very hour—giving of themselves to maintain, grow and preserve the fruits of a hard won victory. It is inconceivable to my mind and I am sure that I voice the sentiments not only of our Society but of all of our friends that we as a body or as individuals remain idle and unresponsive to their plea for help.

Further, our concern should be for civil rights to protect all people—to encourage interest in the solution of interracial problems—to prevent abuse of minority groups—these matters should receive the primary consideration of the lawyer and we shall join and cooperate with The Chicago Bar Association and other public and civic bodies in attempting to resolve them.

My friends, history demonstrates that the lawyer is best equipped and qualified to assist in resolving these problems and by our continued work and effort, we can in a large degree determine the kind of future we shall have.

Almost thirty-six years ago one of our great judges, Judge Learned Hand, had this to say about our profession—"The profession of the law has its fate in its own hands; it may continue to represent a larger, more varied social will, by a broader more comprehensive interpretation. The change must come from within; the profession must satisfy its community by becoming itself satisfied with the community. It must assimilate society before society will assimilate it. It must become organic to remain a living organ.

The lawyer must either learn to live more capaciously or be content to find himself continuously less trusted, more circumscribed, until he becomes hardly more important than a minor administrator confined to a monoto-

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Legal Education

Harry A. Iseberg, Chairman Legal Education Committee announces the following schedule of four meetings of his Committee. The names of other speakers on the program, their subjects and dates on which they will appear, will be published in a near issue of our Journal. All of the meetings will take place at the Covenant Club, on Fridays, at noon day luncheons.

THE SCHEDULE

Friday, September 22

Current Illinois Decisions

L. LOUIS KARTON

Assistant Corporation Counsel Head—Appeals Division

Friday, October 27

Current Developments in Public Housing

ELMER GERTZ

Former President—Public Housing Association of Illinois

Friday, November 17

Current Illinois Decisions

HARRY FINS

Author, Instructor, John Marshall Law School

Friday, December 22

Current Federal Court Decisions

BERNARD H. SOKOL

Former Assistant U. S. District Attorney

Society Host to

Judicial Candidates

While non-political in nature The Decalogue Society of Lawyers has always maintained a strong interest in the caliber and fitness of aspirants to Judicial office. In keeping with a custom established since its foundation the Society has invited as its guests, judicial candidates who are to be balloted upon at the election, November 7.

The *Republican* candidates will be guests of the Society at a luncheon in the Ballroom, Covenant Club, 10 N. Dearborn Street, *Friday noon, September 29*, while the *Democrats* are scheduled to visit with the membership *Friday noon, October 13*, at a luncheon also at the Covenant Club.

President Appoints Society Committee Heads

ACTIVE TERM PLANNED

The hopes and aspirations of our new President for a productive year are centered in the personalities of the chairmen of the Society's Committees the list of which follows.

Mr. Sussman has expressed deep confidence in the integrity and the competence of the men appointed to carry on Society's chief activities in the profession and in its relationship to the community at large. These men are to supply the leadership that is to perpetuate the ideals of the Decalogue Society of Lawyers. The President has stressed the need for the enlistment of the interest of the entire membership in the work of these committees and its participation in the labors ahead.

COMMITTEE

CHAIRMAN

Budget and Auditing	Frank E. Shudnow
City and State Legislation	Benjamin M. Becker
Civic Affairs	Elmer Gertz
Combined Jewish Appeal	Joseph M. Solon
Constitution and By-Laws	L. Louis Karton
Decalogue Journal	Benjamin Weintraub
Diary and Directory	Oscar M. Nudelman
Ethics and Inquiry	Archie H. Cohen
Federal Legislation	Harry G. Fins
Forum	Bernard Sokol
Foundation Fund	Nathan Schwartz
House and Library	Eva R. Pollack
Insurance	Morton Schaeffer
Inter-Bar Relations	Judge Abraham L. Marovitz
Judiciary	Michael Gesas
Labor Law	Leon Despres
Legal Aid	Harry D. Cohen
Membership	H. Burton Schatz
Membership Conservation	Michael Levin
Merit Award	Roy I. Levinson
Organization and Social Agencies	Maxwell N. Andalman
Placement & Employment	Eugene Bernstein
Planning	Paul G. Annes
Post Legal Education	Harry A. Iseberg
Professional Relations	Samuel Allen
Public Relations	David F. Silverzweig
Speakers Bureau	Alex M. Golman
Younger Members Activities	Hon. George M. Schatz
Welfare	Norman N. Eiger

Our Law Library

Jack E. Dwork retiring chairman of our Library Committee extends in behalf of our Society and the new head of the Committee, Miss Eva R. Pollack, another invitation to all members to visit and use The Decalogue Law Library, third floor, 180 W. Washington Street. A congenial atmosphere for study is assured, insists our chairman. To date, the lawyer in search of sources to buttress or illuminate points of law will find at his service among other useful volumes the following sets:

Illinois Supreme Court Reports
Illinois Appellate Court Reports
Northeastern Reporter, 2nd Series
Smith-Hurd Illinois Annotated Statutes
West-Illinois Digest
Corpus Juris
Corpus Juris Secundum
Nichols Illinois Civil Practice 7 Vols.
Negligence Compensation Cases Annotated 23 Vols.
Collier on Bankruptcy 9 Vols.
MacNeil on Illinois Evidence
Modern Legal Forms 4 Vols.
Bouvier's Law Dictionary 3 Vols.
Uniform Laws Annotated 11 Vols.

Plans are in the making for a "House Warming Day" at our headquarters at which the Library will be "officially" introduced to the membership. Details will be forthcoming as soon as all arrangements for the celebration are completed.

THE IDEAL LAWYER

"The true conception—ideal if you please, of the lawyer, is that of one who worthily magnifies the nature and duties of his office; who scorns every form of meanness or disreputable practice, who by unwearied industry, masters the vast and complex learning and details of his profession; but who, not satisfied with this, studies the eternal principles of justice as developed and illustrated in the history of the law, and in the jurisprudence of other times and nations, so earnestly that he falls in love with them and is thenceforward not content unless he is endeavoring by every means in his power to be not only an ornament but a help unto the laws and jurisprudence of his State and Nation."

JOHN F. DILLON
Laws and Jurisprudence
of England and America

A Note on the Gateway Amendment

by L. LOUIS KARTON

Mr. Karton, member of the Board of Managers Decalogue Society of Lawyers has been assistant Corporation Counsel from 1938 to date, and at the head of Appeals and Review division since 1946.

The 1949 General Assembly rejected the latest attempt to hold a Constitutional Convention in Illinois to give the Constitution of 1870 a thorough overhauling. It did, however, authorize the submission to the electorate, on November 7, 1950, of the so-called "Gateway Amendment" for amendment of the Constitution by legislative initiative. The Gateway Amendment (Senate Joint Resolution 27) provides for amending section 2 of Article XIV of the Constitution to permit a new, alternative method for ratification of constitutional amendments by the voters. It provides that amendments may be ratified by either of the following methods: (1) a favorable vote by a majority of the electors voting at the election (the present method), or (2) a favorable vote by two-thirds of the electors voting on the proposed amendment (the new method).

The Gateway Amendment proposes that the General Assembly shall have no power to initiate amendments to more than three articles of the Constitution at the same session, nor to the same article oftener than once in four years. Under present limitations, the General Assembly may propose amendment of only one article at each session and may propose amendments of the same article but once in each quadrennium.

The party responsibility bill which would have permitted political parties to indicate their stand on a proposed amendment, on the ballot, was rejected by the General Assembly. Passage of this bill would have resulted in the vote of a straight ticket being counted for or against the amendment according to the position taken by the political party and would have obviated the situation which now exists by virtue of the fact that non-voting for an amendment constitutes a vote against, under the present requirement for a majority of all votes cast at the election.

To encourage voting on proposed amend-

ments, however, the General Assembly amended the Election Code so that, when there is a proposition to amend the Constitution or call a Constitutional Convention to be voted on, the official ballot must bear a legend in large bold type: "You have been provided with a separate blue ballot which is a Constitution ballot." This separate blue ballot bears in bold face type a notice informing the voter that failure to vote the ballot is equivalent to a negative vote and that the ballot must be returned to the election judge.

It must be remembered that the Gateway Amendment is subject to the present Constitutional requirement that a majority of those voting at the election must cast an affirmative vote for the amendment in order that it be adopted. It is this very procedure which the Gateway Amendment seeks to alter to enable amending the Constitution without the terrific handicap contained in the present Constitutional requirement.

The need for constitutional revision in Illinois is urgent. In the brief space allotted for this article no more than a passing reference to the shortcomings of the Constitution is possible. The Revenue Article, designed to meet the needs of a rural community, when land was the principal form of wealth, provides that taxes levied upon property should be uniform with the result that personal property, which today represents the vast bulk of wealth, if taxed on the same basis as real property, would result in confiscation. To avoid this, returns are either not filed or are perjured, or the stock, bonds or bank deposits are removed from the State before Assessment day.

That the Judiciary article requires revision is known to every lawyer. Our court system should be reorganized throughout.

The Gateway Amendment falls far short of the benefits which would flow from a constitutional revision through a convention, yet it offers, at present, the only opportunity to obtain any relief. As such, it deserves the active support of all who sincerely desire an improvement in the Illinois Constitution.

Remember in November (7th)

The following announcements of the names of candidates for public office are confined to members of the Decalogue Society of Lawyers only and are offered to our members as news only and not as endorsements or recommendations.

S. S. Epstein, Democrat, is candidate for State Representative Nineteenth Senatorial District.

Eli Golan is candidate for reelection as member of the Board of Appeals on the Republican Ticket.

Judge Samuel Heller is candidate for reelection as Judge of the Municipal Court on the Republican ticket.

Samuel Kart is candidate for Representative Thirty-First Senatorial District on the Republican Ticket.

Charles B. Komaiko is the Democratic candidate for Congress, Twelfth District.

Marshall Korshak is the Democratic candidate for State Senator, Fifth District.

Edward P. Saltiel, State Senator thirty-first Senatorial District, is candidate to succeed himself on the Republican ticket.

S. S. Schiller is candidate for Judge of the Municipal Court on the Republican ticket.

Harry S. Stark is candidate for Judge of the Municipal Court on the Republican ticket.

Samuel M. Starr is candidate for Judge of the Municipal Court on the Republican Ticket.

Burton I. Stolar, is the Republican candidate for State Representative Twenty-seventh Senatorial District.

Sidney R. Yates, Congressman 9th Illinois District and former Editor of the Decalogue Bulletin is seeking reelection for a second term on the Democratic ticket.

Decalogue Luncheon Meetings

On Friday of each week the Board of Managers of The Decalogue Society of Lawyers meets in a private dining room, for luncheon, at noon, at the Covenant Club, 10 North Dearborn Street. Members are invited to attend, listen to committee reports, and learn of the activities of our Bar Association. No reservations necessary.

APPLICANTS FOR MEMBERSHIP

APPLICANT	SPONSORED BY
Arthur E. Berlin	Daniel A. Uretz
Louis L. Biro	Avrum N. Andalman
Benjamin Bromberg	Morris S. Bromberg
Earl A. Deutsch	Avrum N. Andalman
Milton Falkoff	Henry X. Dietsch
Irving D. Fasman	Richard Fischer and J. L. Echeles
Paul H. Leffmann	Michael Gesas and Archie H. Cohen
Samuel D. Golden	Harry A. Iseberg
Bernard Samuel Kaplan	Nathan D. Kaplan and Elmer Gertz
David Katz	Richard Fischer
Harold A. Liebensson	Avrum N. Andalman
Max A. Reinstein	Archie H. Cohen and Nathan M. Cohen
Joseph A. Rosin	Edward Contarsy
Hyman Schechet	Solomon Jesmer
Benjamin S. Schwartz	Richard Fischer
Irwin B. Smith	Samuel Solomon and Richard Fisher
Harry S. Stark	Harry G. Hershenson and Harry H. Malkin
Ralph J. Stark	Avrum N. Andalman
Calvin R. Sutker	H. Burton Schatz
George L. Weisbard	Benjamin Weintroub

ELECTED TO MEMBERSHIP

The following applicants were elected to membership on July 7, 1950.

Joseph H. Braun	Richard L. Ritman
David H. Finkle	Bernard S. Rooth
Martin K. Irwin	Oscar A. Schechter
Irving J. Karlin	William B. Spar
Alexander C. Lawrence	Sidney J. White

APPOINTMENT

Elmer Gertz, Chairman of our Civic Unity Committee has been appointed to an Advisory Committee to the Chief Justice of the Municipal Court of Chicago. This Committee was made mandatory by the Illinois Legislature in 1949, when it amended the Municipal Court Act, subject to a referendum by the voters of Chicago.

This Committee is selected on a non-partisan basis and is advisory in regard to the functioning of the Psychiatric Institute and the Social Service Department of the Municipal Court.

A Bar Association's Blueprint for Progress

by ELMER GERTZ

We are obliged to member Elmer Gertz, chairman of our Civic Affairs Committee and member of our Board of Managers, for this able digest of a comprehensive article which appeared two months ago in another Bar association journal. Comments from members, if any, should be addressed to our own Planning Committee, in care of our Society's headquarters, 180 West Washington Street.

In the July, 1950, issue of the *American Bar Association Journal*, there is a provocative series of suggestions for bar association executives by Mr. Glenn R. Winters, Secretary-Treasurer of the American Judicature Society. The article is based upon the file of applications for the American Bar Association Award of Merit for local professional groups. The suggestions are not exhaustive, of course; but they are tried and tested. With the thought that they may stimulate Decalogue Society members to suggest items in our own agenda, we are here summarizing Mr. Winter's article.

The basal metabolism, so to speak, of an organization are its services to itself. The first requisite of any membership organization is that it have as many members as possible. In the case of our Society, this should mean the enrollment of every lawyer and jurist of the Jewish faith. To obtain such members, we must, first of all, invite them in—repeatedly and in as many appealing ways as possible.

And as Mr. Winters says, members must be not only won, but held. An important tool, as we now realize more than ever, is a regular publication and occasional special releases and publications of the types that will be read by members. There must be meetings: not alone annual meetings or mid-year ones, but monthly and weekly meetings of officers, committees and members. If meetings are held frequently, even those who do not attend will be increasingly aware of the organization.

The greater the income of a bar association, the greater the services it can render. Substantial dues are as easy to collect as lesser amounts and will permit the Society to perform its functions fitly. This, in turn, will bring in members.

No bar group can get along without an

executive secretary or an administrative Assistant. Volunteers are not enough.

Every bar group should have a foundation fund of increasing size. It should concern itself in practical ways with the canons of ethics. It should compete with similar groups for the A.B.A. Award of Merit, not simply to win, but in order to profit by the successes and failures of others. This means, too, the coordination of its efforts with those of similar groups in its own community and elsewhere.

The second phase of bar groups' work is service to its members. This includes educational activities, such as post-admission legal education, a law library, essay contests and lectureships, a clearing house on law office management. It includes, also, money-saving for its members, such as insurance and benefit plans (group hospitalization, group life insurance, accident and health insurance), a credit union, central purchasing, central printing, mimeographing and lithographing, and the like.

As a professional organization, a bar group should offer professional services, such as advance sheets, bar directories, standard forms, attorney and secretarial placement. And there is room for social and miscellaneous activities, such as plays, sports, the cultivating of hobbies. Members should feel that they are getting something in return for the payment of their dues.

Finally, a bar group should justify its existence by service to the public. Legal aid and lawyer reference plans should be developed. Various legislative services should be performed, such as the promulgation of a bar-sponsored legislative program and the analysis of pending or proposed legislation. The group should concern itself with unauthorized practice and with grievances voiced by the public. It should police its own ranks. One will readily think of such obvious activities as school lectures, naturalization ceremonies, citizenship awards; but even more important is the effort expended on behalf of great civic causes, the kind of work that our Civic Affairs Committee tries to perform.

Perpetuities Revisited— A Practical Approach to a Practical Problem

by MILTON M. HERMANN

Milton M. Hermann, is instructor in Real Property and Future Interests at John Marshall Law School where he also gives a course to lawyers in Appellate Practice and Brief Writing. During World War II he was chief of the Appellate Division, the Midwest Region of the Office of Price Administration.

More than a century ago Lord Chancellor Hardwicke observed that there was hardly any estate of consequence without a trust. Today with the importance of trusts increased almost beyond calculation—it is estimated that at least thirty-six billions of dollars are held by banks and trust companies in trust estates—the dictum of the Lord Chancellor may be repeated with even greater conviction.

The Lord Chancellor might have added that there is hardly a trust without a future interest. Indeed, it may be said that almost every will, trust agreement, or other instrument disposing of property in any substantial amount presents a problem in the law of future interests.

For most practitioners the subject of "future interests" continues to be a "riddle wrapped within an enigma." They dismiss this field cavalierly as one that is far withdrawn from the "practical" considerations of their private practices. They suggest that the law schools would better serve the interests of their students if they were to dispense with the teaching of this "mysterious" subject and concentrate upon such "practical" matters as the draftsmanship of wills and trust agreements.

Yet this subject is neither enigmatic nor impractical. On the contrary, the courts have developed fixed principles in this field—principles which have evolved from a definite legal philosophy and which, if ignored or unknown, may result in disaster to the testamentary or other dispositive scheme which the client retains the attorney to effect. It must be obvious, too, that before the niceties of draftsmanship can be taught, the student must understand fully the substantive effect which the law gives to the words and phrases he employs.

No aspect of the field of future interests is of greater practical importance, in the drafting of wills and trust agreements, than the Rule against Perpetuities. The impetus given to the use of the trust device by the marital deduction provisions of the Revenue Act of 1948 makes at least a nodding acquaintance with the operation of this Rule "a must" for the draftsman. Though it is true that one cannot hope to become an expert on this subject without long and arduous study—Professor Gray, after all, produced a tremendous tome on the Rule alone—yet the draftsman, without too much difficulty, can grasp enough of the essential principles to enable him to recognize a problem when it exists—a recognition which in many cases will make him pause and consider.

What the non-expert needs, of course, is a ready formula which will enable him to solve most of the problems which he will face in the drafting of his dispositive instruments. Is there any such formula—any approach which will ease his way in this field? Perhaps a brief glance at the nature of the problem and how it arises would be helpful before considering a formula for its solution.

A future interest is an interest in property, real or personal, the possession or enjoyment of which is postponed until a future time. It may be an interest in income or corpus, or both.

Sometimes the person or persons who are to receive the interest are identified but vesting of the interest and enjoyment of the property are contingent upon, and are postponed until, the happening of a given event. Thus a testator leaves a bequest of \$500,000.00 to the University of Chicago for research and study in the causes and cure of cancer, such bequest to become effective "when said University shall have received, from all other sources, gifts totalling \$5,000,000.00 for the same purposes."

Sometimes, however, the person or persons who are to receive the interest are unidentified, their identity being postponed until the happening of a future event. Thus a settlor, by a

living trust agreement, transfers assets to a trustee, with directions "to pay the income to my wife Mary during her life, and upon her death to pay the income to my children for their lives in equal shares, and upon the death of the last child of mine to survive, to distribute the corpus to all my grandchildren then living, share and share alike." Here the wife is given a present interest in income; but neither the children nor grandchildren of the settlor are identified since, by the terms of the instrument, the income (after the death of wife Mary) is to go to *all* children of the settlor (including those born after the execution and delivery of the true agreement) and the corpus is to go only to those grandchildren who shall be living on the date of the death of the last child of the settlor to survive.

Both of the above examples present typical problems in connection with the Rule against Perpetuities. The central question with which the Rule deals, of course, is: How long may the vesting of an interest be postponed beyond the effective date of the instrument creating such interest? In the first case given above, the instrument provided for no time limit within which the condition precedent—the acquisition by the University of \$5,000,000.00 in funds for like purposes from all other sources—must be fulfilled before the University could acquire the bequest. In the second case, the vesting of the corpus in the grandchildren of the settlor is postponed until the death of the last child of the settlor to survive, and such child of the settlor may possibly be a child not born on the date of the delivery of the trust agreement. Both cases, therefore, pose the question whether vesting of the interest provided for may occur at too remote a time from the standpoint of public policy.

The Rule against Perpetuities represents the fruits of judicial ingenuity in frustrating attempts to tie up property for an unreasonable length of time. The law has always manifested grave concern that titles should not be suspended in mid-air. Provisions which make uncertain the vesting of interests in property for an unreasonable length of time impede or prevent the free alienation of such property and withdraw it from the channels of commerce. Such provisions have been traditionally viewed as violative of a sound social policy.

What, then, is the "reasonable time" specified in the Rule? The late Professor Gray of Harvard, the high priest and prophet in this field, stated the principle in its best and most condensed form: No interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest. The Rule, in this compressed form, has been adopted by the Supreme Court of this state in numerous cases.

It should not be too difficult to break the Rule into its component parts and develop a formula which will simplify its application to a set of facts. It is suggested that the following steps constitute the proper analytical approach to the solution of a perpetuities problem:

1. The measuring stick prescribed by the Rule is a life in being at the *creation of the interest* plus twenty-one years. Since the interest is created as of the date that the instrument speaks, our first step is to consider the nature of the instrument we are dealing with and when it becomes legally effective. If it be a deed or a living trust agreement, it becomes effective, of course, upon delivery; if a will, upon the death of the testator. As we shall see below, a given provision may be invalid if used in a deed or living trust agreement and valid if used in a will.
2. Does the instrument *expressly* point out a life or lives in existence on the effective date of the instrument as a measuring stick? Does it, for example, provide that the income shall go to the widow of the testator for life, and not later than twenty-one years *after the widow's death* the corpus shall go to a named charity, provided that such charity shall have complied with a condition precedent specified in the instrument? Here it should be noted that the life or lives must be human beings (not corporations or animals); they may (but need not) be lives of persons taking interests under the instrument or affected thereby; they may (but need not) be members of the family concerned; and the lives used may not be so numerous nor so situated that evidence of the death of the last survivor would be unreasonably difficult to obtain. Moreover, a *class* of persons may

be used as the measuring lives only if the class is closed as of the effective date of the instrument. Thus a living trust agreement which creates life interests in the children of the settlor and gives the corpus to a named charity twenty-one years after the death of the last child of the settlor to survive would violate the Rule; for the law conclusively presumes the capacity to have children as long as life lasts, and therefore the class used as a measuring stick (the lives of the settlor's children) is not closed as of the date the instrument speaks. On the other hand, the same provision in a will would be valid, since the class (the children of the testator) would necessarily be closed as of the date of the testator's death. Here, too, it should be observed that, for purposes of the Rule, a posthumous child is a child in being.

3. If the instrument does not *expressly* point out a life or lives as the measuring stick, does it impliedly do so? Thus a testator devises Blackacre to such of his grandchildren as shall attain the age of twenty-one years. Although the children of the testator are not expressly pointed out as the lives in being, they are impliedly used for that purpose and the devise is good.
4. If the instrument neither expressly nor impliedly points out a life or lives in being, does it use a gross period of not more than twenty-one years from the effective date of the instrument as the measuring stick? If it does, the Rule is not violated.
5. Does the instrument inexorably require that the interest vest within the time specified, if it is to vest at all? It is not enough that the interest *may* vest within the time limited by the Rule, or even that it will almost certainly vest within that time. If by any possibility the interest may vest at a time which is too remote, it is invalid. Thus a bequest by T to all the descendants of B living on the date that T's estate is closed in the Probate Court of Cook County is void, even though it is extremely improbable that the estate will remain open for more than twenty-one years after the testator's death. The possibility that it

may not be closed within that time is enough to invalidate the provision.

It should be noted, in passing, that the invalidity of one provision under the Rule invalidates the entire instrument unless it can be reasonably assumed that the grantor, settlor, or testator would have wished the rest of the dispositive scheme to stand had he known that the provision in question was void. The problem of separability thus presented becomes essentially an exercise in crystal gazing.

Space limitations have obviously made it impossible to do more than give a sketch of the subject here; but it is hoped that the formula and approach given above will be helpful to the practitioner in the normal task of draftsmanship. It is, of course, the draftsman's task to consider every possible contingency; and in doing so, he must give an active imagination its fullest scope.

INAUGURAL ADDRESS

(Continued from page 4)

nous round of record and routine, without dignity, inspiration or respect. There can be no ambiguity in the answer of those who are worthy of the tradition and the power of a noble calling."

I believe that the lawyer has entered upon a period of great opportunity. It is with a sense of great humility that I accept the responsibilities of my office. In counting on your help I hope to prove worthy of your confidence.

THE IDEAL JUDGE

"The true ideal of a Judge is no longer a figure with bandaged eyes but rather the figure of one who carries in his upraised hands the torch of truth from on high, and who, throughout the arguments of counsel and in the maze and labyrinth of adjudged cases, walks ever with firm step in the illumination of its constant and steady flame.

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NEW BOOKS

The Editorial Committee is indebted to member Bernard H. Sokol for suggesting most of the titles of books listed below. While, in the main, these volumes are not narrowly "legal" in content, these books dwell on subjects familiarity with which may be of interest to the lawyer.

On Understanding the Supreme Court, by Paul A. Freund, Little, Brown & Co. 130 pp. \$3.00.

Dangerous Words, by Phillip Wittenberg, Columbia University Press (1947). 335 p. \$3.50.

Here I Have Lived, by Paul Angle, Rutgers U. Press. 315 pp. \$3.75.

Reason and Law, by Morris R. Cohen, The Free Press. 211 pp. \$3.50.

Primer of Intellectual Freedom. Edited by Howard Mumford Jones, Harvard U. Press. 191 pp. \$2.75.

Mark My Words, by John B. Opdycke, Harper & Brothers. 687 pp. \$5.00.

The Show of Violence, by Dr. Frederic Wertham, Doubleday & Co. 279 pp. \$3.00.

Corporate Accumulations and Section 102, by Lasser & Holzman, Matthew Bender & Co. 273 pp. \$6.00.

Dr. Johnson and the Law, by Sir Arnold McNair, Cambridge U. Press. 115 pp. \$2.00.

Courts on Trial, by Jerome Frank, Princeton U. Press. 441 pp. \$5.00.

The Legacy of Sacco and Vanzetti, by Jonglin and Morgan, Harcourt Brace & Co. 598 pp. \$6.00.

The Sense of Injustice, by Edmond M. Cahn, N. Y. U. Press. 186 pp. \$3.50.

This I Do Believe, An American Credo, by David E. Lilienthal, Harper & Bros. 208 pp. \$2.50.

Behind the Bar, by A. E. Bowker, Staples Press, Inc. 323 pp. \$3.75.

Separation of Religion and Government, by Frank Swancara, Truthseeker Company. 246 pp. \$2.50.

Five Jewish Lawyers of the Common Law, by Arthur L. Goodhart, Oxford University Press. 74 pp. \$1.50.

The New Federalism, by Samuel Seabury, E. P. Dutton & Co. 311 pp. \$5.00.

Courtroom, by Quentin Reynolds, Harcourt, Brace & Co. 419 pp. \$3.75.

Politics, Trails and Errors, by Right Honorable Lord Hankey, Henry Regnery Company. 150 pp. \$2.50.

Congress and Foreign Policy, by Robert A. Dahl, Harcourt, Brace and Company. 305 pp. \$4.00.

The New Federalist, Publius II, Justice Owen J. Roberts, John F. Schmidt and Clarence K. Streit. Introduction by John Foster Dulles, Harper & Bros. 109 pp. \$1.50.

BOOK REVIEWS

by PAUL G. ANNES

Mr. Annes, member of our Board of Managers, is a frequent lecturer on Federal taxation and is a former President of the City Club of Chicago.

The Sense of Injustice, by Edmond N. Cahn, New York University press. 186 pp. \$3.50.

Five Jewish Lawyers of The Common Law, by Arthur L. Goodhart. Oxford University Press. 74 pp. \$1.50.

Prof. Cahn states that the purpose of his book is "to present an anthropocentric view of the law," the meaning of legal concepts according to their impact on individual human beings. To realize that purpose the author has considered three fundamental antitheses of legal theory: Justice and Power; Freedom and Order; Security and Change.

These categories constitute an ancient and ambitious inquiry which remains current and urgent in our own day. These problems are easier put than solved. Of the three the first is the most clearly presented by the author, and its resolution easiest to understand. That is important, for in Prof. Cahn's own estimate, this part of his work is fundamental to the rest.

The author's prime undertaking is to resolve the conflict between the view of Law as the will of a dominant ruler or class wherein power is the substance of legality—and the view of Law as inherent justice or righteousness,—a kind of "natural law" conception. This part of the book is most convincing. Historical example and "a priori" argument are combined to show that neither a system of "natural law" nor the command of a sovereign is sufficient to account for the similarities of legal systems. Prof. Cahn concludes "justice" to mean the active process of remedying or preventing what would arouse the "sense of injustice." It is this *sense of injustice* which in Prof. Cahn's analysis resolves the contradiction with which he begins.

A number of simple examples are given to illustrate the operation of the sense of injustice. One will have to suffice for this review. Five men involved at the same time under the same circumstances in an automobile parking violation are tried. Three are acquitted, one is fined five dollars, and the fifth is given a ninety day jail sentence. Our sense of injustice is aroused, calling out actively for equality (of punishment).

Other situations are presented to show how similarly men may come to champion human

dignity, confinement of governmental functions and other affirmative doctrines. It is this *sense of injustice*, affirms the author, which is the synthesis between Justice and Power, working "to harness power to social purpose." The reader may well remark here that philosophic and legal learning in the end arrives at the practical notion of social utility as the end and measure of the Law.

The rest of the volume is not so obvious. Of "Freedom and Order" Prof. Cahn concludes that "freedom, itself an amoral concept, has been accorded nobility in the ideal pattern of the democratic man. Law may so educate men as to make them not unworthy of that pattern. They may thus become free in the only sense accessible to social life; that is, subject to an order of their own fashioning."

Lastly, the author considers Security—"the feel of firm social support"—in opposition to the urge of social change, and falls back upon the cryptic sesame that "if we had the sense of injustice, then could we expect to be secure." But each situation and every change still requires a specific blue-print of "social purpose." In the past, human societies have largely found them through trial and error; too often, through trial by combat.

Professor Goodhart's little volume grew out of a lecture delivered by him before the Jewish Historical Society of England. It presents a miniature biography of five Jewish lawyers of England and America, known to almost every lawyer if not every Jew, of both countries. They are Judah P. Benjamin, Sir George Jessel, Louis D. Brandeis, Rufus Isaacs, First Marquess of Reading, and Benjamin N. Cardozo. It is hardly a biography in the usual sense of the word; rather, a brief record of their public life.

It is the record of Benjamin, who at the age of forty-two was nominated by President Fillmore as Justice of the United States Supreme court, a nomination which he declined; who was to become later Confederate Secretary of State and later yet a refugee in England, only in turn to gain recognition there as an outstanding lawyer and legal scholar. We read of Jessel, whose life was an unbroken success, famous as a great Judge who adapted old rules to new conditions. More familiar to all of us, our own Brandeis, with his passion for facts in support of new approaches of the Law, and with his fearlessness, even before Bigness. One gets a more kindly feeling for Lord Reading, an imposing figure in the limelight of his time.

The last sketch is of Cardozo, that fine and sensitive man, so outstanding a Judge and so felicitous a writer on the Judicial Process.

It all makes easy and agreeable reading, a leisure hour well spent.

LAWYERS ANSWER CALL

(Continued from page 1)

Division, co-ordinated the efforts of these units as well as the State's Attorney and Corporation Counsel offices under Hyman Feldman and L. Louis Karton respectively.

250 lawyers gathered at the Palmer House for the June 12, Fund Raising Dinner of the Lawyers Division in an impressive demonstration of community solidarity. Senior partners and junior clerks seated around tables reserved by firms responded together to Judge Harry Fisher's earnest appeal, in behalf of Israel. The audible response of those assembled was of equal enthusiasm for the largest gift (in five figures) as for the young man who stood up, announced he had just been taken on as a clerk and was proudly offering his first week's salary (\$25.00) to CJA. The "pressure" of this kind of giving flowed not so much from outside forces as from the inner understanding of the minds and hearts of those who gave.

The 1950 CJA Campaign found top positions in the overall city-wide "Appeal" filled from the ranks of the bar with Reuben L. Freeman giving of himself to the day and night pace required of him week after week as General Chairman. Marvin Welfeld as General Co-chairman and Judge Fisher as General Vice Chairman played leading roles in Chicago's raising of \$7,000,000, to date. Hundreds of lawyers participated as active workers in all the campaign's efforts in the organizational life of the community.

The Lawyers Division has still to complete its program. September and October will find "mop-up" operations proceeding under the direction of Lawyers' Division secretary, Ira Miller.

Decalogue Society members are urged to continue their co-operation in response to the unprecedented needs of those of our brethren who can look to none but us and who, but for the accident of history are . . . ourselves.

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COVENANT CLUB ELECTS

The following members of The Decalogue Society of Lawyers have been elected officers of the Covenant Club: Joseph H. Braun, President; Henry L. Burman, first Vice President; Samuel J. Baskin, second Vice President; Philip H. Mitchell, Financial Secretary; John H. Chatz, Assistant Treasurer.

Bernard H. Sokol and Benjamin Weintraub were elected Directors.

HONORED

Morris K. Levinson past president of The Decalogue Society of Lawyers and Paul G. Annes member of our Board of Managers have been reelected directors of the City Club of Chicago. Philip R. Davis was elected Vice President.

ELECTED

Harold E. Friedman, 100 N. La Salle Street has been elected Grand Master of the Progressive Order of the West.

RES IPSA LOQUITUR

(Continued from page 1)

"... The courage of the survivors to rehabilitate themselves has thrilled the imagination of the world. So does the miracle achieved by the people of the democracy of Israel now and at this very hour—giving of themselves to maintain, grow and preserve the fruits of a hard won victory. It is inconceivable to my mind and I am sure that I voice the sentiments not only of our Society but of all of our friends that we as a body or as individuals remain idle and unresponsive to their plea for help."

The Editorial Committee is grateful for the encouragement it has received from many members in helping it launch this issue. It hopes to continue to merit their support. The beginning speaks for itself. Res Ipsa Loquitur.

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